Supreme Court, U.S.
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No. 84-1257

In the Supreme Court of the United States

OCTOBER TERM, 1984

RICHARD L. GLOVER, on behalf of himself and all others similarly situated,

Petitioner,

v.

UNITED GROCERS, INC., an Oregon corporation; LOCAL NO. 962 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; CLIFFORD COOPER, Secretary-Treasurer; JACK ALEXANDER; LAYTHELL BALES; AL CARDER and GREGG NEWSTAND, Representatives,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT TEAMSTERS, CLIFFORD COOPER, JACK ALEXANDER and LAYTHELL BALES

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QUESTION PRESENTED

Did the Court of Appeals properly apply the six-month statute of limitations announced in DelCostello v. International Brotherhood of Teamsters, infra, to this case where it was alleged that a Joint Conference Board, consisting of an equal number of union and employer members, improperly modified the seniority provisions of the collective bargaining agreements, by dovetailing seniority lists, after the Employer had changed its method of operations?

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Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF OF RESPONDENT TEAMSTERS, CLIFFORD COOPER, JACK ALEXANDER and LAYTHELL BALES

STATEMENT OF THE CASE

Respondent United Grocers, Inc. (hereinafter the "Employer") and

Respondent Local No. 962 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter the "Union") were parties to four collective bargaining agreements covering the Employer's work force in Medford, Oregon. There was a master collective bargaining agreement known as the Wholesale Grocery Master Agreement and three supplemental agreements, which covered grocery drivers, dairy drivers and produce warehousemen. The collective bargaining agreements had provisions concerning seniority and provided that there would be separate seniority lists for grocery drivers, dairy drivers and produce warehousemen. (Pet. App. E-17 and 18). Petitioner was employed by the Employer as a grocery driver and covered by the terms and conditions of the collective bargaining agreements.

While the collective bargaining agreements were in effect, the Employer changed its operation and began shipping mixed truck loads of groceries, produce and dairy goods. The Employer requested permission from the Union to merge or dovetail the three seniority lists into a single seniority list. The affected employees were opposed to the dovetailing of the seniority lists. (Pet. App. E-18, G-22 and 23).

Petitioner subsequently filed a grievance alleging that the Employer had violated the seniority provisions of the collective bargaining agreements when it sent a produce warehousemen, instead of himself, to deliver a mixed load of produce, groceries and dairy goods. In accordance with the grievance procedures of the collective bargaining agreements, the grievance was referred to a Joint

Conference Board which consisted of two panel members designated by the Employer and two members designated by the Union. (Pet. App. E-19).

On August 9, 1982, the Joint Conference Board issued a written decision and unanimously determined that the three seniority lists should be merged into a single seniority list because of a change in the Employer's operations. (Pet. App. E-19 and G-22-24). Under the terms of the collective bargaining agreements, the unanimous decision of the Joint Conference Board was final and binding and could not be appealed further. (Pet. p 3-4, ¶ 14.5).

On March 21, 1983, seven months and twelve days after the final and binding decision of the Joint Conference Board, Petitioner filed this case and alleged that the Employer had violated the

collective bargaining agreements by the merging of the seniority lists and the Union had breached its duty of fair representation by allowing the Employer to merge the seniority lists. (Pet. App. E-15 and 19).

The Employer and the Union filed separate motions to the dismiss the complaint on the ground that it was barred by the statute of limitations. The District Court granted the Employer's and Union's motions to dismiss and the Ninth Circuit Court of Appeals affirmed the District Court.

SUMMARY OF ARGUMENT

Petitioner filed this action in the District Court and it was dismissed on the ground that it was an action for breach of the duty of fair representation and not timely filed within the six-month

limitation period announced by this Court in DelCostello v. International Brotherhood of Teamsters, 462 US 151 (1983). The Court of Appeals for the Ninth Circuit affirmed and the only issue argued by Petitioner was whether the DelCostello rule should be applied retroactively. In this Petition, it is claimed for the first time that the Petitioner's action was not an action for the breach of the duty of fair representation, or a suit to vacate an arbitration award, but instead was some new undefined cause of action in which it will "be necessary for this Court to characterize the nature of this suit in order to determine which suitable state statute of limitations should be borrowed." (Pet. p. 13).

The Petitioner contends that this action is unique because it "concerns the validity of the means by which

modifications of collective bargaining agreements are made, and the opportunities afforded union members to challenge those modifications." (Pet. p. 5). The Petitioner's contentions have been fully answered by this Court in Ford Motor Company v. Huffman, 345 US 330 (1953); Humphrey v. Moore, 375 US 335 (1964) and subsequent decisions of Court of Appeals, all of which have held that a labor organization, as a bargaining representative, has the power to amend existing labor agreements and such action is not a violation of its duty of fair representation so long as such change is made in good faith and with honesty of purpose in the exercise of its discretion. If there is no violation by the union of good faith, there is no breach of the duty of fair representation. If there is such a breach, a violation of the duty of fair

representation occurs and the six-month statute of limitations of DelCostello applies. Thus, the Petitioner's complaint involved a claimed breach of the duty of fair representation and no new cause of action has been presented.

ARGUMENT

A. Petitioner's Complaint Alleges a Breach of the Duty of Fair Representation and is Controlled by the DelCostello Decision.

The question posed by this Petition for a Writ of Certiorari is what statute of limitations should govern this case. The question was answered by the Supreme Court in DelCostello v. International Brotherhood of Teamsters, 462 U.S. at 169-71, where the Court held that the six-month statute of limitations set forth in Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b)

was the appropriate statute of limitations to be applied when it is alleged that a union has breached its duty of fair representation. Petitioner's complaint, which was filed seven months and twelve days after his cause of action accrued, is time barred by the six-month statute of limitations adopted for hybrid breach of contract/fair representation cases in the DelCostello decision.

In this Petition, it is alleged for the first time that Petitioner's cause of action against the Union is not governed by the DelCostello decision. In the lower courts, Petitioner characterized his claim against the Union as a suit for the breach of the duty of fair representation. In the District Court, the Petitioner argued that his cause of action was tolled by the filing of an unfair labor practice charge with the

National Labor Relations Board and therefore, the six-month statute of limitations set forth in DelCostello had not run at the time the lawsuit was filed. (Pet. App. A-3). In the Court of Appeals, Petitioner's only argument was that the DelCostello decision should not be applied retroactively. (Pet. App. C-9).

Petitioner now apparently contends that his suit is not properly characterized as a breach of the duty of fair representation, or a suit to vacate an arbitration award, but rather is a new undefined cause of action for the improper modification of a labor agreement for which a new statute of limitations must be adopted. (Pet. p. 13).

A review of Petitioner's complaint reveals his sole theory against the Union was for breach of the duty of fair representation. The complaint carries this

caption and allegations that the Union breached its duty of fair representation can be found throughout the complaint. (Pet. App. E-15 and 19).

A review of the DelCostello decision indicates the Supreme Court intended to adopt a uniform statute of limitations that would apply to all breach of contract/fair representation cases. The allegations in Petitioner's complaint, that the Employer and Union improperly modified the collective bargaining agreements by merging or dovetailing separate seniority lists, are properly characterized as a fair representation claim against the Union.

In Ford Motor Company v. Huffman, 345 U.S. 330 (1953), the union agreed to amend a labor agreement and thereby granted enhanced seniority rights to a particular group of employees which

resulted in layoffs to other employees. This Court held the union did not breach its duty of fair representation because the action was taken in good faith and with honesty of purpose. 345 U.S. at 338.

In Humphrey v. Moore, 375 U.S. 335 (1964) a Joint Area Committee merged separate seniority lists and this Court followed the Ford decision and held the action was proper and the union did not breach its duty of fair representation.

This Court's decisions in the Ford and Humphrey cases have been followed in a number of Court of Appeals cases. See, e.g. Baker v. Newspaper and Graphic Communications Union, Local No. 6, et al, 628 F2d 156 (DC Cir 1980) (merger of two printing crafts at a newspaper); Ekas v. Carling National Breweries, et al, 602 F2d 664 (4th Cir 1979) cert den 444 U.S. 1017 (1980) (merger of seniority lists when two

plants merged) and I.L.W.U. v. Kuntz, 334 F2d 165 (9th Cir 1964) (modification of seniority rosters).

In summary, regardless of how Petitioner now characterizes his cause of action, the gravamen of his complaint is that certain seniority lists were improperly merged. Under prior Supreme Court precedent, these allegations state a claim for the breach of the duty of fair representation. Petitioner's complaint is governed by the six-month statute of limitations adopted by this Court in DelCostello and was properly dismissed by the lower courts.

B. The Petition Does Not Warrant Review by the Supreme Court.

This case does not meet any of the important considerations the Supreme Court normally relies upon when deciding which

petitions for a Writ of Certiorari should be granted for the following reasons:

1. This case has not created a conflict among the Circuits;

2. There has been a very limited record developed in this case. Since the trial court granted the Employer's and Union's motions to dismiss, the record is limited to the Petitioner's complaint and several exhibits that were attached to the complaint;

3. The argument now advanced by Petitioner, that the DelCostello decision does not govern this case, was not raised in the District Court or the Court of Appeals, and

4. This case has no national significance or interest because the national policy favoring the rapid resolution of labor disputes has been set at six-months by this Court in

DelCostello. Even if Petitioner's claim involves some new cause of action, the statute of limitations should still be the six-month period adopted in the DelCostello decision.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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